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6 *Attorney for Plaintiff*

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JOHNNY R. THOMAS,  
ROBERT C. POTTS,  
JONATHAN BRETT WOODARD, and  
JOHN C. FRANCIS,

Defendants.

Case No. 19-cv-1132-JCM-EJY

**STIPULATION AND  
~~[PROPOSED]~~ PROTECTIVE  
ORDER WITH RESPECT TO  
THE PRODUCTION OF  
SENSITIVE PERSONAL  
INFORMATION AND  
~~[PROPOSED]~~ NON-WAIVER  
AND CLAWBACK ORDER**

WHEREAS, the parties are engaged in disclosure and discovery activity in this matter that will include, among other things, the initial service of documents identified in the parties' Rule 26(a) reports, the production of documents and information by parties and non-parties in response to subpoenas and other requests for information, and the taking of testimony;

WHEREAS, portions of many such documents, information, and transcripts will likely contain personally identifiable information about individuals, including the Defendants in this matter; and

WHEREAS, the parties desire to protect such information from use for any purpose other than this litigation and therefore desire to expand the protections offered by Federal Rule of Civil Procedure 5.2(a) and Local Rule IC 6-1 of the United States District Court for the District of Nevada;

1 ACCORDINGLY, Plaintiff Securities and Exchange Commission, and Defendants Johnny R.  
2 Thomas, Robert C. Potts, Jonathan “Brett” Woodard, and John C. Francis, through their respective  
3 counsel, hereby stipulate to and petition the Court to enter the following Stipulated Protective Order:

4 As used in this Order, the term “Sensitive Personal Information” shall include any one or more  
5 of the following categories of personal and private information: (a) a social security or tax  
6 identification number; (b) individuals’ financial information, including but not limited to statements  
7 or account numbers for any bank account, credit card account, brokerage account, fund transfer or  
8 payment facilitation account, mortgage, or loan; (c) biometric data, such as a finger or voice print;  
9 (d) tax information, including but not limited to tax returns; (e) the phone number(s) of any individual  
10 person; (f) the birth date of any individual person; (g) the name of any individual person who, at the  
11 time of the filing of the Complaint in this action, was known to be less than 18 years old; (h) medical  
12 information, and/or (i) the maiden name of an individual’s mother.

13 Sensitive Personal Information does not include public information about an individual that  
14 is lawfully available to the general public.

15 Sensitive Personal Information produced during the course of this litigation shall not be used  
16 by any party to this litigation (“Party”) except as expressly permitted hereunder.

17 **Sensitive Personal Information:**

- 18 1. Shall be used by the Parties for the purposes of this litigation only;
- 19 2. Shall not be used by the Parties for any business or commercial purposes;
- 20 3. Shall not be disclosed to any third party, published or otherwise made public in any form  
21 by any Party except as permitted below;
- 22 4. May be disclosed only to the following persons, on an as-needed basis in the course of the  
23 litigation:
  - 24 a. A Party;
  - 25 b. Counsel for any Party and employees and agents of counsel who have  
26 responsibility for the preparation and trial of this action, including but not limited  
27 to attorneys, employee consultants, legal support staff, and any person or entity  
28 with whom a Party contracts to reproduce or manage documents;

- 1 c. Independent (non-employee) consultants, expert witnesses, or advisors retained by  
2 any Party or counsel for any Party to assist in the preparation and trial of this  
3 action;
- 4 d. Deposition and trial witnesses and others whom counsel in good faith have a  
5 reasonable expectation may be a deposition or trial witness to the action; provided  
6 that such persons shall first be advised of the existence and content of this  
7 Stipulation and Protective Order and shall execute a Declaration of Confidentiality  
8 in the form attached hereto as Exhibit A;
- 9 e. A document's author(s), recipient(s), or copyee(s);
- 10 f. The Court, members of the jury, and court personnel, including any Judge or  
11 Magistrate assigned to the action, their staff, as well as court reporters or  
12 stenographers engaged to record depositions, hearings or trial testimony, and their  
13 employees.

14 The disclosing Party shall retain and preserve all completed and signed Declarations of  
15 Confidentiality received from persons identified in Paragraphs 4(d) for the duration of this action and  
16 any appeals arising therefrom, or until further order of the Court.

17 Notwithstanding any other provisions contained herein, nothing in this Stipulation and  
18 Protective Order shall be construed to limit or otherwise abrogate the SEC's ability to make its files  
19 available pursuant to the "Routine Uses of Information" section of SEC Forms 1661 or 1662, or to  
20 comply with any other statutory obligation.

21 All Sensitive Personal Information that is filed with the Court, or offered into evidence at the  
22 trial of this action, or referenced in any proceeding in this action, including in arguments made to the  
23 Court, shall comply with Federal Rule of Civil Procedure 5.2(a) and Local Rule IC 6-1 of the United  
24 Stated District Court for the District of Nevada.

1                   **Non-Waiver and Clawback Provision Concerning Privileged Material Inadvertently**  
2 **Disclosed During Litigation**

3           The inadvertent production of any document or information during discovery in this case shall  
4 be without prejudice to the disclosing Party's claim that such material is privileged under the attorney-  
5 client privilege, the attorney work product doctrine, or any other applicable privilege or protection,  
6 and no disclosing Party shall automatically be held to have waived any claims or arguments under the  
7 inadvertent production doctrine.

8           If a disclosing Party discovers that it inadvertently produced during discovery a document or  
9 information that it claims is privilege under the attorney-client privilege, the attorney work product  
10 doctrine, or any other applicable privilege or protection, the disclosing Party shall so notify the Party  
11 or Parties to whom the document or information was produced in writing within five (5) calendar  
12 days of such discovery. The failure to provide such notification within the five-day period shall result  
13 in a waiver of the claim of privilege. Within five (5) calendar days of receipt of written notice from  
14 the disclosing Party, the receiving Party or Parties shall return, sequester or destroy all copies of the  
15 identified material and make no further use of such material pending resolution of the claim.

16           The Parties shall meet and confer in an effort to resolve any disagreements concerning the  
17 identified material, including, but not limited to disagreements concerning whether the material is  
18 privileged, whether the production was inadvertent, whether the privilege has been waived. If the  
19 Parties cannot resolve their disagreement(s), any Party may apply to the Court within five (5) days of  
20 the meet-and-confer and present the information to the Court under seal for a ruling on the disclosing  
21 Party's claim.

22           Nothing in this agreement is intended to shift the burden of the Party claiming the privilege  
23 of establishing that the privilege applies and has not been waived.

24           The parties agree to be bound by the terms of this Order pending its entry by the Court. Any  
25 violation of the terms of this Order before it is entered by the Court shall be subject to the same  
26 sanctions and penalties as if the Order had already been entered by the Court.

27           The obligations imposed by this Order shall remain in effect even after the final disposition  
28 of this litigation unless the Court orders otherwise.

1 This Stipulation and Proposed Order may be modified by agreement of the Parties and upon  
2 further Order of the Court for good cause shown.

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4 Respectfully submitted,

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6 Dated: October 25, 2019:

7 /s/ Suzanne J. Romajas  
8 Suzanne J. Romajas  
9 Securities and Exchange Commission  
10 100 F Street, NE  
11 Washington, DC 20549-5971  
12 [RomajasS@sec.gov](mailto:RomajasS@sec.gov)

13 *Attorney for Plaintiff*

14  
15 Dated: October 25, 2019:

16 /s/ Adam C. Trigg  
17 Randall R. Lee  
18 Jessica Valenzuela Santamaria  
19 Amy M. Smith  
20 Cooley LLP  
21 1333 2<sup>nd</sup> Street, Ste. 400  
22 Santa Monica, CA 90401  
23 [Randall.Lee@cooley.com](mailto:Randall.Lee@cooley.com)

24 *-and-*

25 Adam C. Trigg  
26 Bergeson LLP  
27 111 N. Market Street, Ste. 600  
28 San Jose, CA 95113  
[ATrigg@be-law.com](mailto:ATrigg@be-law.com)

*Attorneys for Defendants Thomas and Francis*

[signatures continued on next page]

1  
2 Dated: October 25, 2019:

/s/ Jonathan D. Bletzacker  
Jonathan D. Bletzacker  
Brent R. Baker  
Clyde Snow & Sessions  
201 South Main Street, Ste. 1300  
Salt Lake City, UT 84111  
Email: [BRB@clydesnow.com](mailto:BRB@clydesnow.com)

6 *Attorneys for Defendants Potts and Woodard*

7 **IT IS SO ORDERED.**

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10 UNITED STATES MAGISTRATE JUDGE

11 DATED: October 28, 2019  
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**EXHIBIT A**  
**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JOHNNY R. THOMAS,  
ROBERT C. POTTS,  
JONATHAN BRETT WOODARD, and  
JOHN C. FRANCIS,

Defendants.

Case No. 2:19-cv-1132-JCM-EJY

**DECLARATION OF  
CONFIDENTIALITY**

I hereby acknowledge that I am to receive documents or information pursuant to the terms of a Protective Order with Respect to the Production of Sensitive Personal Information (“Order”) in *Securities and Exchange Commission v. Johnny R. Thomas, et al.*, Case No. 2:19-cv-1132-JCM-EJY, pending in the United States District Court for the District of Nevada.

I acknowledge receipt of a copy of the Order, and certify that I have read it. I agree to be bound by the terms and restrictions set forth therein.

I agree to submit to the jurisdiction of the United States District Court for the District of Nevada with respect to any proceedings relating to or arising from this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)